IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 16.7.2007

Coram:

The Honourable Mr.Justice M.JAICHANDREN

S.A.No.674 of 1996

D.Rajagopal .. Appellant (Plaintiff)

vs.

1. The General Manager,
   Cellular Concrete Plant,
   Tamil Nadu Housing Board,
   Ennore, Madras 600 057.

2. A.Thambusamy .. Respondents (Defendants 1 and 2)

The Second Appeal has been filed against the judgment and decree of the Ist Additional District Judge, Tiruchirapalli, dated 29.7.1994, made in A.S.No.111 of 1992, and the cross objection in A.S.No.111 of 1992, arising out of the decree and judgment of the Principal District Munsif, Ariyalur, dated 20.4.1990, made in O.S.No.387 of 1986.

For Appellant : Mr.J.Ramakrishnan for
M/s. Sarvabhauman Associates

For Respondents : M/s. Adhi Narayana Rao for R1
No appearance for R2

J U D G E M E N T

The second appeal has been filed against the judgment and decree of the 1st Additional District Court, Tiruchirapalli, dated 29.7.1994, made in A.S.No.111 of 1992, and the Cross Objection in A.S.No.111 of 1992, arising out of the judgment and decree of the Principal District Munsif, Ariyalur, dated 20.4.1990, made in O.S.No.387 of 1986.

2. The plaintiff in the suit O.S.No.387 of 1986, on the file of the District Munsif Court, Ariyalur, is the appellant in the present second appeal. The plaintiff had filed the suit for a decree of recovery of money.

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3. The short facts of the case, as stated by the plaintiff, are as follows:

Based on the tender, dated 31.7.1982, the plaintiff had entered into an agreement with the first defendant for mining, sizing and transporting 4,500/- tonnes of limestone from Melarasoor lime stone quarry. The said lime stone quarry had been handed over to the plaintiff, on 21.6.1983. When the plaintiff had commenced the work, on 21.6.1983, he was obstructed from further mining and carrying out his work by the labourers, who were working in the mines, since they were not given their due labour charges of Rs.6,150/- for the stock of 250 metric tonnes mined and left by the second defendant.

4. In the letter, dated 4.7.1983, sent by the second defendant to the first defendant, it had been stated that he was not interested in the above said stock of 250 metric tonnes stocked by him and that he had requested the Management to effect payment of wages and lift the material from the quarry.

5. Since the plaintiff has to continue his mining operations and to have a smooth running with the labourers, as per the oral intimations from the first defendant, the plaintiff had been obliged to pay out of his pocket and paid, accordingly, a total amount of Rs.6,150/-, on 15.7.1983, to discharge the arrears of wages, as per the accounts maintained by the first defendant. The plaintiff is entitled to reimbursement of the amount, under Section 70 of The Indian Contract Act. However, the said amount had not been paid by the defendants. Therefore, the plaintiff had filed the suit praying for a judgment and decree in favour of the plaintiff against the defendants for a sum of Rs.6,150/- and for Rs.5,000/- against the first defendant for the retention of the amount.

6. In the written statement filed on behalf of the first defendant, it has been stated that the claim of the plaintiff that when he had started his work, on 21.6.1983, he was prevented by the labourers, due to non-payment of labour charges of Rs.6,150/- for the stock of 250 Metric tonnes left by the second defendant, is false and untrue. In fact, there was no balance of mining charges to be paid by the first defendant to the second defendant and the same cannot be treated as arrears of labourers' charges and as such, the second defendant did not request the Management to effect the payment of labour charges and lift the material from the quarry. The suit is not sustainable in law.

7. It is also not true to state that as per the oral intimation from the first defendant, the plaintiff had paid a total amount of Rs.6,150/-, on 15.7.1983, to discharge the arrears of the labour charges, as per the accounts maintained by the first defendant. According to the provisions of the Contract Labour and Abolition Act,

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1971, (Central), the principal employer has to settle the account of the arrears of labour charges to the labourers directly and the same may be deducted from the Contractor's Bill. As the plaintiff is a third person, he cannot settle the account to the labourers. If a third person interfered in the previous contract by settling the arrears of labour charges, it is purely at his own risk and cost and the principal employer is not liable to pay anything to the third person.

8. Since the plaintiff has not furnished the correct fact with regard to his illegal acts of removing the 250 metric tonnes stocked by the second defendant, the amount of Rs.5,000/- has been withheld as fine amount. Therefore, the plaintiff is not entitled to get the withheld amount of Rs.5,000/-. The alleged cause of action for the suit is not correct and true and the same is not maintainable.

9. In the written statement filed by the second defendant, it has been stated that the claim of the plaintiff that the amount of Rs.6,150/- has been paid to the labourers as labour charges due to them on the oral intimation of the first defendant cannot be accepted as true. After the contract between the first defendant and the second defendant had come to an end, the amount of Rs.5,600/- had been paid to the second defendant towards the mining cost for the quantity of limestone taken away by the first defendant from the quarry. The claim that the plaintiff had paid the amount due to the labourers directly is not true. The cause of action alleged in the plaint is false. The suit filed by the plaintiff is time barred. Hence, the suit is liable to be dismissed.

10. Based on the averments made in the plaint filed on behalf of the plaintiff and the written statements filed on behalf of the defendants, the trial Court had framed the following issues for consideration:-

> "1. Whether the plaintiff had paid an amount of Rs.6,150/- to the labourers as per the oral intimation of the first defendant? Whether any cause of action arises on behalf of the plaintiff based on the said payment?
>
> 2. Whether the duty of reimbursement, as stated in the plaint by the plaintiff, is true? Is it sustainable?
>
> 3. Whether an amount of Rs.5,600/- has been paid to the second defendant, for the stock of quarried limestone, after the conclusion of the agreement between the first and second defendants?
>
> 4. Whether the second defendant is liable to pay the amount as claimed by the plaintiff?

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5. Whether there is any cause of action in the suit?

6. Whether the suit is barred by limitation?"

11. The trial Court had noted that the plaintiff had examined himself as P.W.1 and he has stated that the first defendant had handed over the limestone quarry to him, on 21.6.1983. At that time it was found that there was a stock of 250 metric tonnes of limestone left by the second defendant and the labour charges due to the labourers, for mining the said limestone, had not been paid to the labourers. It was also stated by the plaintiff, in his evidence, that the second defendant had instructed the plaintiff to pay the labour charges due to them and to take away the 250 metric tonnes of limestone left over at the quarry. The first defendant had also requested the plaintiff to start quarrying activity after payment of labour charges due to the labourers. Since the plaintiff had discharged the liability, paying the amount of Rs.6,150/- as labour charges due to the labourers of the quarry, the said amount was due to him.

12. The trial Court had found that in Exhibit B.1, which is a letter written by the second defendant to the first defendant, on 4.7.1983, it was stated that the second defendant had no connection with the balance stock of the limestone, because he had not made any payment to the workers for the balance quantity of lime stone. It was also stated therein that the workers may agree to transport the material provided they were paid by the Department for the mined quantity of limestone.

13. From Exhibit B.1, the trial Court had found that the second defendant had admitted that the left over stock of limestone had been cut and removed by the second defendant through the labourers employed by him and that the labourers had not been paid the labour charges for the same. From the statement made by D.W.1, the trial Court had found that the plaintiff had entered into the contract. On 21.6.1983 and on 21.7.1983, the plaintiff had sent two loads of limestone having commenced his operations only a week before that. From the two receipts, dated 15.7.1983 and 6.9.1983, annexed to Exhibit B.22, it was found that the receipts were relating to the payment of amounts to the labourers, with regard to the 250 metric tonnes of limestone at the quarry. Even though the second defendant had stated that the receipts were not relating to the said contract, there is nothing to show that there was any other agreement between the plaintiff and the second defendant. Further, Exhibits B.5 to B.18, marked on behalf of the second defendant, were found to be the certificates and not vouchers relating to the payment of labour charges claimed to have been made by the second defendant in the year,1983. Based on the evidence available, the trial Court had found that the plaintiff was entitled to his claim for Rs.6,150/- paid as labour charges.

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14. With regard to the second issue arising for consideration, the trial Court had found that no proof had been shown on behalf of the first defendant that the plaintiff had removed the 250 metric tonnes of limestone quarried by the second defendant and kept at the quarry without the permission of the first defendant. Even though the stock register was said to have been maintained by the first defendant, the said register had not been filed before the Court. In spite of several procedural formalities required to remove and take away the quarried limestone from the quarry, including obtaining of Gate pass and entries being made in the necessary register, nothing has been shown on behalf of the first defendant to substantiate the allegation that the plaintiff had removed the limestone stock without the permission of the first defendant. Therefore, the plaintiff was entitled for the amount of Rs.5,000/- deducted as fine amount. Based on such findings, the trial Court had decreed the suit of the plaintiff with costs.

15. Aggrieved by the judgment and decree of the Principal District Munsif Court, Ariyalur, dated 20.4.1990, made in O.S.No.387 of 1986, the first defendant had filed an appeal before the Ist Additional District Court, Tiruchirapalli. In the said appeal A.S.No.111 of 1992, the second defendant had filed a cross-objection praying for setting aside the judgment and decree of the trial Court.

16. Based on the averments made on behalf of the parties concerned and on the evidence available on record, the lower appellate Court had framed the necessary four points for consideration.

17. While deciding the first issue, the lower appellate Court had found that since there was no assurance given by the second respondent to the first respondent to repay the amount of Rs.6,150/-, said to have been paid as labour charges, the second respondent is not liable to pay the first respondent the said amount.

18. With regard to the second issue, the lower appellate Court had found that the first respondent is not entitled for the reimbursement of Rs.5,000/-, levied as penalty amount, since the first respondent/plaintiff had not made any appeal to the higher authorities.

19. With regard to the issue of limitation, the lower appellate Court had held that the plaintiff ought to have instituted the suit within 3 years from 15.7.1983, which is said to be the date of payment of the labour charges to the labourers of the limestone quarry. Since the plaintiff had instituted the suit only, on 19.8.1986, the lower appellate Court had come to the conclusion that the suit is barred by limitation, as provided under Article 23 of the Indian Limitation Act, 1963. Since the lower appellate Court had found that the appellant/first defendant was not liable to pay any amount to the plaintiff, the appeal was allowed with costs. Having allowed the appeal made in A.S.No.111 of

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1992, the lower appellate Court had also allowed the cross-objection filed by the second defendant.

20. Aggrieved by the judgment and decree of the Ist Additional District Judge, Tiruchirapalli, dated 29.7.1994, made in A.S.No.111 of 1992 and the cross objection in A.S.No.111 of 1992, the plaintiff in the suit O.S.No.387 of 1986, had filed the present second appeal.

21. The second appeal had been admitted on the following substantial question of law:

> "1. Whether the lower appellate Court is correct in law in coming to the conclusion that the suit is barred by limitation?"

22. The plaintiff/appellant had raised various grounds in the second appeal stating, inter alia, that the lower appellate Court had failed to consider the material evidence available on record. It has also been stated that the lower appellate Court ought to have decreed the suit with regard to the claim of the plaintiff for a sum of Rs.6,150/-, since the first defendant had removed the limestone stock and thereby derived a benefit only because the plaintiff had discharged his liability of the labour charges due to the labourers.

23. It has also been stated that since the second respondent was paid a sum of Rs.5,600/- towards labour charges in the month of December, 1985, and since the penalty amount had been withheld, on 15.6.1984, the lower appellate Court ought to have held that the suit filed by the plaintiff in the month of August, 1986, to be within time. Further, there was no evidence to show that the plaintiff had illegally transported 250 metric tonnes of limestone stock, without the prior permission of the first defendant. By withholding the amount of Rs.5,000/- due to the plaintiff, the first defendant had gained by unjust enrichment. The conclusion of the lower appellate Court stating that the plaintiff ought to have availed the appellate remedy before the higher authorities cannot be sustained. Further, the conclusion of the lower appellate Court that the plaintiff had paid the sum of Rs.6,150/- on his own accord, without having been instructed by the second defendant to do so, is baseless and unsustainable.

24. The learned counsel appearing on behalf of the respondents had stated that the judgment and decree of the lower appellate Court is correct, as it is based on the evidence available on record. It was also stated that the claims made by the plaintiff are unsustainable, as it is barred by law of limitation. The plaintiff did not have sufficient proof to show that the first defendant is liable to pay the amounts claimed by the plaintiff, as no proof has been shown that he had paid the labourers a sum of Rs.6,150/- due to them, as labour charges, on the intimation of the second defendant and the plaintiff has not shown that he had removed

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250 metric tonnes of limestone stock from the quarry after having obtained the permission of the authorities concerned.

25. On analysing the rival contentions and the evidence available on record, this Court is of the considered view that the findings of the lower appellate Court, with regard to the claim of the plaintiff for Rs.6,150/- said to have been paid to the labourers as labour charges can be sustained. Further, the plaintiff ought to have shown that the defendants had assured that the amount would be reimbursed to him at a later stage. Further, as held by the lower appellate Court, the plaintiff ought to have claimed the amount of Rs.6,150/- within a period of three years from 15.7.1983, which is the date of alleged payment. Since the suit had been filed only, on 19.8.1986, the lower appellate Court had held that the said claim is barred by limitation provided under Article 23 of the Indian Limitation Act, 1963.

26. With regard to the claim of the plaintiff against the first defendant for the payment of Rs.5,000/-, withheld as penalty, it is seen that there is no proof shown on behalf of the first defendant to persuade the lower appellate Court to come to the conclusion that the limestone stock quarried by the second defendant had been taken away by the plaintiff, illegally, without the permission of the second defendant. In such circumstances, it would not be proper to direct the plaintiff to approach the higher authorities by resorting to alternate remedies.

27. In such view of the matter and also in view of the fact that the first defendant had returned the amount of Rs.30,000/- to the plaintiff, withheld as value of the limestone stock alleged to have been removed by the plaintiff, the suit filed by the plaintiff in O.S.No.387 of 1986, on the file of the District Munsif Court, Ariyalur, is partly allowed to the extent of the plaintiff's claim against the first defendant with regard to the payment of Rs.5,000/- withheld as penalty. However, the conclusions arrived at by the lower appellate Court in A.S.No.111 of 1992 and the cross-objection in A.S.No.111 of 1992, would stand confirmed with regard to the claim of Rs.6,150/-. Accordingly, by partly setting aside the judgment and decree of the lower appellate Court, dated 29.7.1994, made in A.S.No.111 of 1992 and the cross objection in A.S.No.111 of 1992, the second appeal is partly allowed. No costs.

Sd/
Asst.Registrar

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Sub Asst.Registrar

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To

1. Ist Additional District Judge, Tiruchirapalli

2. The Principal District Munsif, Ariyalur

3. The Section Officer,
   V.R.Section, High Court, Madras

1 cc To M/s.Sarvabhuaman Associates, Advocate, SR.43384.

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